> the arbitration clause was never presented to this court, and no predicate was established for consideration of the unconscionability issue. Lewis says he seeks mandamus to the Fifth Circuit before the United States Supreme Court in order to correct this faulty conclusion. Lewis specifically notes that he presented cases in his brief to this court, and that the necessity for arguing the matter of unconscionability to this court was obviated by the court's ruling in Lewis' favor on other grounds. This court does not quarrel with these factual assertions. Nevertheless, the United States Court of Appeals has issued its mandate for arbitration to proceed, and Lewis seeks to stay the Fifth Circuit's mandate while claiming that he does not wish to interfere with the mandate. The court finds the reasoning to be circular.
>
> In the instant case, Lewis has shown only that he seeks to halt the arbitration ordered by the Fifth Circuit's decision in a case it remanded to this court. The arbitration ordered by the Fifth Circuit in no way interferes with this court's jurisdiction or its ability to manage its cases. This court is bound by the Fifth Circuit's directive. . . .

Resp't App. A p.2a-3a.

The district court's Order denying Petitioner's Motion to Stay while his Petition for Writ of Mandamus is pending, as well as the district court's subsequent Order denying Lewis' Motion that the district court reconsider its Order demonstrates that on more than one occasion, Petitioner has

sought and been afforded meaningful judicial review. The courts below have held that Lewis' request to stay these proceedings does not present extenuating circumstances, is devoid of abuse of judicial discretion, or demonstrates any justifiable basis that he should not be compelled to arbitrate his claims or that the arbitration should otherwise be stayed.

The Fifth Circuit expressly ruled that Lewis' claims are "part and parcel of the dispute to be arbitrated." *See* App. at 10a. Implicit within this ruling is the finding that the arbitration agreement between the parties is valid and not unconscionable. The Petitioner fails to demonstrate any extra ordinary basis or abuse of discretion requiring this Court to mandate the Fifth Circuit to explain the basis for its ruling that the claims of the parties are subject to arbitration.

CONCLUSION

For the foregoing reasons, Respondents Woodmen of the World Life Insurance Society and Monarch Life Insurance Company respectfully request this Court to deny the Petition for Writ of Mandamus.

Respectfully submitted,

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APPENDIX

APPENDIX A — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION DATED JUNE 23, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3:02-cv-182WS

WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY

PLAINTIFF

vs.

ROLAND C. LEWIS

DEFENDANT

ROLAND C. LEWIS

THIRD PARTY PLAINTIFF

vs.

MONARCH LIFE INSURANCE COMPANY

THIRD PARTY DEFENDANT

ORDER

Once again before the court is the matter presented by the defendant/third-party plaintiff Roland C. Lewis as an urgent and necessitous matter under Rule 7.2(H) of the Uniform Rules of this court. Lewis seeks to stay arbitration

in this matter while a motion for mandamus to the United States Court of Appeals for the Fifth Circuit is pending before the United States Supreme Court. Earlier, the Fifth Circuit reversed this court's Order denying Woodmen's motion to compel arbitration of its claims against Lewis, thereby compelling Lewis to arbitrate the disputes between the parties. The Fifth Circuit also reversed this court's Order denying Woodmen's motion to compel arbitration of Lewis's counterclaim and third-party claims against Monarch Life Insurance Company, holding that these claims are part and parcel of the entire dispute to be arbitrated.

After seeking mandamus relief from the United States Supreme Court, Lewis asked this court for a stay of the arbitration proceedings initiated by Woodmen pursuant to the Fifth Circuit's ruling. Lewis contends that the Fifth Circuit's decision is flawed because it is based in part on the conclusion that the issue of unconscionability of the arbitration clause was never presented to this court, and no predicate was established for consideration of the unconscionability issue. Lewis says he seeks mandamus to the Fifth Circuit before the United States Supreme Court in order to correct this faulty conclusion. Lewis specifically notes that he presented cases in his brief to this court, and that the necessity for arguing the matter of unconscionability to this court was obviated by the court's ruling in Lewis' favor on other grounds. This court does not quarrel with these factual assertions. Nevertheless, the United States Court of Appeals has issued its mandate for arbitration to proceed, and Lewis seeks to stay the Fifth Circuit's mandate while claiming that he does not wish to interfere with the mandate. This court finds the reasoning to be circular.

Appendix A

Lewis asks this court to consider the "All Writs Act" and this court's authority to protect its own judgments. The "All Writs Act", Title 28 U.S.C. § 1651, provides that a court "may issue all writs necessary or appropriate in aid of [its] respective jurisdiction." The Fifth Circuit gave guidance to courts applying the All Writs Act in *ITT Community Development Corporation v. Barton*, 569 F.2d 1351 (5 Cir. 1978), stating that the power granted by the All Writs Act, "is firmly circumscribed, its scope depending on the nature of the case before the court and the legitimacy of the ends sought to be achieved through the exercise of the power." *Id.* at 1358-59. The Fifth Circuit particularly noted that a court may not rely on the Act to enjoin conduct that is, "not shown to be detrimental to the court's jurisdiction." *Id.* at 1359. Instead, any order under the Act must be "directed at conduct which, left unchecked, would have had the practical effect of diminishing the court's power to bring the litigation to a natural conclusion." *Id.* So, this court must apply the "All Writs Act" with restraint to control only those actions or other conduct which would inhibit the court's ability to resolve or manage a case before it. *See Williams v. McKeithen*, 939 F.2d 1100, 1104-05 (5th Cir. 1991), reaffirming the approach taken in the *Barton* case.

In the instant case, Lewis has shown only that he seeks to halt the arbitration ordered by the Fifth Circuit's decision in a case it remanded to this court. The arbitration ordered by the Fifth Circuit in no way interferes with this court's jurisdiction or its ability to manage its cases. This court is bound by the Fifth Circuit's directive. Thus, the "All Writs Act" has no application to the instant case.

Therefore, once again, this court finds that the motion of the defendant/third-party plaintiff Roland C. Lewis to stay arbitration in this matter while his motion for mandamus to the United States Court of Appeals for the Fifth Circuit is pending before the United States Supreme Court must be denied.

SO ORDERED this the 23rd day of June, 2005.

s/ HENRY T. WINGATE
CHIEF UNITED STATES DISTRICT JUDGE

APPENDIX B — ORDER OF THE UNITED STATES DISTRICT COURT FOR THE SOUTHERN DISTRICT OF MISSISSIPPI, JACKSON DIVISION DATED JUNE 14, 2005

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI
JACKSON DIVISION

Civil Action No. 3:02-cv-182WS

WOODMEN OF THE WORLD LIFE INSURANCE SOCIETY

PLAINTIFF

vs.

ROLAND C. LEWIS

DEFENDANT

ROLAND C. LEWIS

THIRD PARTY PLAINTIFF

vs.

MONARCH LIFE INSURANCE COMPANY

THIRD PARTY DEFENDANT

ORDER

Before the court is the motion of the defendant/ third-party plaintiff, presented as an urgent and necessitous matter under Rule 7.2(H) of the Uniform Rules of this court, to stay arbitration in this matter while a motion for mandamus

to the United States Court of Appeals for the Fifth Circuit is pending before the United States Supreme Court. Earlier, the Fifth Circuit reversed this court's Order denying Woodmen's motion to compel arbitration of its claims against Lewis, thereby compelling Lewis to arbitrate the disputes between the parties. The Fifth Circuit also reversed this court's Order denying Woodmen's motion to compel arbitration of Lewis's counterclaim and third-party claims against Monarch Life Insurance Company, holding that these claims are part and parcel of the entire dispute to be arbitrated. Now, Lewis approaches this court for a stay of the arbitration proceedings initiated by Woodmen, contending that this court should do so because a motion for mandamus to the Fifth Circuit is pending before the United States Supreme Court.

In support of the motion to stay, Lewis argues that the state law doctrine of unconscionability regarding arbitration clauses was not considered by this court or the Fifth Circuit. However, Lewis did not raise this issue until Woodmen appealed this court's Order, and the Fifth Circuit applied its well established policy to ignore all issues not first raised in the district court. Now, the Fifth Circuit has directed arbitration to proceed, and this court has no authority to direct otherwise. Lewis urges the court to look to the cases holding that district courts have the authority to vacate arbitration awards. Certainly, this court may have the power in certain circumstance to set aside an arbitrator's findings, but this is not the same thing as interfering with or impeding the Mandate of the Fifth Circuit Court, and Lewis has presented no authority giving this court the power to stay the Circuit Court's Mandate.

Accordingly, the motion of the defendant/third-party plaintiff Roland C. Lewis to stay arbitration in this matter while his motion for mandamus to the United States Court of Appeals for the Fifth Circuit is pending before the United States Supreme Court must be denied.

SO ORDERED this the 14th day of June, 2005.

s/ HENRY T. WINGATE
CHIEF UNITED STATES DISTRICT JUDGE